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RECORD OF ORAL HEARING  
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

EX PARTE BARRY OMSHEHE, JANIE WEST, and PAUL W. FORNEY

Appeal 2009-000883  
Application 09/954,509  
Technology Center 2400

Oral Hearing Held: June 10, 2009

Before LEE E. BARRETT, LANCE LEONARD BARRY, and  
JEAN R. HOMERE, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANTS:

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1           The above-entitled matter came on for oral hearing on Wednesday,  
2   June 10, 2009, at The U.S. Patent and Trademark Office, 600 Dulany Street,  
3   Alexandria, Virginia, before Kevin Carr, Notary Public.

4  
5           JUDGE BARRY: Counsel, we thought this point you made in your  
6   appeal brief on page 8 --

7           MR. JOY: Okay.

8           JUDGE BARRY: -- that the Final Office Action is mixing and  
9   matching elements from Reding's two distinct authorization modes --

10          MR. JOY: Yes.

11          JUDGE BARRY: Considering that almost all the claims are rejected  
12   under 102, we thought that was a pretty important point.

13          MR. JOY: I agree. If you'd like me to just briefly describe my  
14   understanding of that reference, my understanding is that Reding shows two  
15   different modes of operation of the licensing scheme.

16          To begin with, Reding teaches a software licensing scheme which I  
17   contended or Appellants contended wasn't even a -- a portal server, but  
18   addressing this issue of two licensing schemes, there's a first scheme where a  
19   user logs on and is given a -- a license -- which is arguably a session, where  
20   they're connected to the server and the user uses the software and is granted  
21   authorization to use the software while connected to the server.

22          There's a second version, a second mode of operation, which is called  
23   the commuter license, and that's not even session-based. It's a situation  
24   where a user disconnects from the system and operates independently of the

1 server and is given use for some designated amount of time. It might be a  
2 month. I think the example was 30 days in the Reding.

3 In fact, I've got the -- I previously mentioned the particular lines that  
4 exists on -- the on-line mode that I described is at column 8, line 33, to  
5 column 9, line 54, and the off-line mode is described at column 9, line 55, to  
6 column 14, line 2, and the point I raised in my Brief was that the anticipation  
7 rejection was based on mixing and matching between those two modes that  
8 were identified at separate parts of that disclosure.

9 JUDGE BARRY: Yes. So, the Examiner was relying on the first  
10 mode, what they call the network authorization --

11 MR. JOY: Right.

12 JUDGE BARRY: -- embodiment for the idea of a session license --

13 MR. JOY: Correct.

14 JUDGE BARRY: -- and then he's relying -- or -- he or she, I forget  
15 which, is relying on the commuter license, the second embodiment, for the  
16 idea of confirming that -- that there's already a license not in existence.

17 MR. JOY: You're absolutely correct, and it's as I noted in the -- in the  
18 Reply Brief, that on-line -- of the off-line mode is no longer a session-based  
19 license.

20 The other point that was raised -- I'm going to just skip to it, because  
21 it's relevant -- is the issue of the list of identified users. The Reding  
22 reference, I would say, pretty unequivocally describes just a counter-based  
23 system. They keep track of how many copies of the software have been  
24 authorized to users.

1           It's merely a list of counters, and I am familiar with that sort of  
2 software licensing scheme use in network software, where they keep track of  
3 how many users are using a particular copy of software and stop when they  
4 reach the maximum.

5           In contrast, the claim calls for maintaining a list of identified users,  
6 and that's in the last -- that's in the last recited element of each of the  
7 independent claims, 1 and 17, and the reason, just to give you a little  
8 background on that, is because this whole portal server scheme is based  
9 upon allowing users to log on, initially, and then jump around to various  
10 resources that are provided by this gateway, this portal server, in an  
11 industrial process controlled environment, and that's because there's various  
12 applications that are available to users on-line to look at, you know, live  
13 data, to look at historical data.

14          They use different software packages for each one of those, and  
15 different data sources for those, and what this invention allows is for a user  
16 to jump around to the various resources and not have to log on every time.

17          You can jump around between some things which are licensed and  
18 some things which aren't licensed, and what happens is, in our case, they  
19 have a license manager which maintains a listing of those users so that a user  
20 can jump around to the various resources and go from a licensed one to an  
21 unlicensed one, okay, so now the license would technically not be needed  
22 anymore, but they would still maintain that license until the user logged off.  
23 That's the session-based aspect of this.

24          And then they go on to another -- another resource and -- a third  
25 one -- and jump back onto it, and not have to worry about losing access,

1 because what happened was the system maintained a listing of authorized  
2 users as -- as this person stayed connected to this portal server, and that  
3 just -- there's just nothing in Reding that even addresses something similar to  
4 that, and I didn't mean to -- even suggestion here, not disclosure, but  
5 just -- there's no basis for saying that there's a list of identified users  
6 disclosed in Reding.

7 JUDGE BARRY: Yeah. Reding, in its Figures 5, 6, and 7, basically  
8 just shows a counter, right?

9 MR. JOY: Right.

10 JUDGE BARRY: The counter starts at, say, 30, and every time a  
11 license is allocated, is decremented.

12 MR. JOY: Exactly. And I just want to, you know, make the point  
13 that I'm not -- the example that I just gave, you know, for the last five  
14 minutes was meant to just give you context for why there's a difference  
15 between the two, and there's an important difference between maintaining  
16 the list and maintaining just a counter.

17 JUDGE BARRETT: Okay. Do you have anything more?

18 MR. JOY: Well, Your Honor, I think I've hit all my major points, and  
19 the reason for the phone call was, as I had said, I think that Appellant's  
20 arguments and just the disagreement between the two -- sorry -- between the  
21 Patent Office and the Appellants has been set out pretty -- in a lot of detail in  
22 these Briefs, and I just wanted to make sure that there is an understanding of  
23 what our claim called for and the importance of these elements that have  
24 been discussed, and specifically points A, B, and C in the reply to the  
25 Appellant's answer.

1           There's actually a total of, I think -- it went up to G or H or something  
2 like that, but I just wanted to make sure that, at the very least, that the Board  
3 understood our position with regard to the claim scope, what someone with  
4 ordinary skill in the art would understand a portal server to mean, and in  
5 view of the Examiner's belief that any type of server sufficed.

6           On additional point, I wanted to make sure that there's an  
7 understanding with regard to Claim 1, because source and resource can get  
8 confusing if you read them really quickly. I just wanted to point out that,  
9 with regard to the first confirming step, it's toward the bottom of Claim 1.

10          JUDGE BARRY: So, the first sub-step?

11          MR. JOY: Yes. It says "first confirming that an identified source."

12          I wanted to make sure you understand that means that -- identified  
13 source is a user in the specific example, and that contrasts with resource, so  
14 the identified source is a user and resource is what the person is trying to get,  
15 and the only reason why I mention that is because, in my preparations, I  
16 got -- when I read the claim the very first time, I got a little confused myself,  
17 and just wanted to make sure that you guys understood source is basically  
18 the requester of a -- of a resource.

19          JUDGE BARRETT: Okay.

20          MR. JOY: And it says in the claim, in that particular element, "an  
21 identified source associated with the request," in other words the requester.

22          JUDGE BARRY: Yeah, it's pretty clear to us.

23          MR. JOY: Okay. Well, that's -- I don't want to take up anymore of  
24 your time. As I said, I -- I primarily wanted to answer any questions that

1   you, the Board, might have with regard to these claims and -- and our  
2   arguments.

3           JUDGE BARRETT: Okay.

4           Are there anymore questions, Judge Barry? Judge Homere? No?

5           That's it. We'll take it under submission, then.

6           MR. JOY: Okay. Thank you very much.

7           JUDGE BARRETT: Thank you.

8           (Whereupon, the proceeding was concluded on Wednesday, June 10,  
9   2009.)